

TESTIMONY BEFORE THE MICHIGAN SENATE
NATURAL RESOURCES, ENVIRONMENT AND GREAT LAKES
COMMITTEE

April 26, 2012

Presented by:

Joseph E. McBride
7838 Port Austin Road
Pigeon, MI 48755

Good Morning Mr. Chairman and other distinguished members of this committee.

To frame my rationale for encouraging you to vote for SB 1052 passage, I would like to start with our beach maintenance situation in my area [Refer to Slide #2]. from Port Austin to Tawas prior to 2000 and then after 2000.

History Before 2000

About the only permits that were demanded along our shoreline by the DEQ and the Army Corps of Engineers (Army Corps) were for seawalls, boat houses, dredging permits for canals and marinas and set back requirements for home construction.

Beach maintenance activities shoreline property owners routinely performed on our beaches without permits included: mechanical removal of debris [Refer to Slide #4] fish hooks, plastic bottles, tin and aluminum cans, plastic bags, fishing line and etc); [Refer to Slides #5 & #6] mechanical movement of sand that accumulated during the winter [Refer to Slide #7], leveling [Refer to Slide #8] and cleaning of sand and removal of muck. [Refer to Slide #9]

History After 2000

DEQ sent out hundreds of letters [Refer to Slide #11] to shoreline property owners stating that they **owned** the area lakeward of the OHWM (580.5) and that the DEQ require that shoreline property owners obtain a permit to maintain their beaches. This egregious action and bold face lie was accomplished despite 75+ years of Michigan Case Law to the contrary and the fact that our deeds show that we owned to the water's edge.

In lockstep with the DEQ, the Army Corps sent out letters [Refer to Slide #12] stating that they exercise Federal Jurisdiction over bottomlands to the elevation of 581.5 feet and required a permit for all beach maintenance except the mowing of vegetation.

The DEQ and Army Corps got together and informed us to send a joint DEQ/Army Corps permit to the DEQ. They also indicated that if we did not receive permits and continued to maintain the beach that court action would follow. When the Army Corps was asked, "Where is the law that requires such compliance?" the best they could provide to us was a memo from the Great Lakes and Ohio Division, not a published Federal Regulation nor could they cite a pertinent Federal Statute. Many of us started on our own legal research. To no surprise the elevation that was in the memo was incorrect and has been acknowledged first by a Federal Court and since that time by the Army Corps of Engineers. [Refer to Slide #13] The OHWM under Federal Law is a fact determination activity and not a set elevation as asserted by the Corps. To me this means that the applications that were submitted and reviewed by both the DEQ and Army Corps personnel were unnecessary and hundreds of man-hours were wasted, tax dollars squandered and things of importance just did not get done.

Consequences of DEQ and Army Corps Actions

- Save Our Shoreline was formed [Refer to Slide #14]
- Thousands of shoreline property owners joined [Refer to Slides #15 & #16]
- Permits were requested by shoreline property owners –Delays of 6 months to a year were common [Refer to Slide #17]
- Denial of Permits – Claiming Wetlands or area (beach) would under normal circumstances be vegetated. [Refer to Slide #18] The only vegetation we saw was Phragmites

- Law suits filed against at least three retired members of SOS [Refer to Slides #19,20 & 21]
- Many Seniors were reluctant to fight so they let their property go wild [Refer to Slide #22] for fear of government retaliation
- Infections rates in Humans [Refer to Slide #23] and Pets increased – West Nile Virus
- Phragmites Flourished [Refer to Slide #24] Causing–
 - Wetlands to be destroyed. – Phragmites has replaced cattails[Refer to Slide #25] and other native plants –reducing wildlife habitat & diversity
 - Erosion of the taxable value on property
 - Restricting shoreline views
 - Reduction of shoreline access for swimming, hunting, fishing, boating and walking [Refer to Slide #26]
 - Creating fire hazards from dry plant material. [Refer to Slide #27]
We have had over the past two years extensive fires from phragmites in the Quanicassee State Wildlife Area, Alburn Hills and other areas.
- PA 14 (2003) was passed permitting beach maintenance activities without a permit in our area [Refer to Slide #28]
- DEQ intentionally delayed a significantly flawed publication [Refer to Slide #29] of their directed study to see what damage was done by beach

grooming permitted under PA14 thus resulted in the law's sun setting provisions to take effect.

➤ SOS Panel of four Scientists (Two with PhDs in wetland science, one with a with a PhD and MD and one MS in wetland science) reviewed the DEQ study and found: [Refer to Slide #30]

- That despite the Legislature's directive, none of the research was specifically designed or undertaken for the purpose of evaluating the impacts of the maintenance activities as required under the law. Instead, it appears the study is simply a continuation of the MDEQ's interest in "wetland fragmentation.
- Misleading effect of data manipulation and analysis [Refer to Slide #31]
- Data sampling was not random; thereby, permitting the study to be biased
- Lack of perspective – much less than 1% of the coastline in Saginaw Bay was impacted
- Validity of referenced sites – initial design abandoned – contiguous referenced and treatment sites

In summary,

We cannot let agencies agenda over-ride the law and the will of the people.

SB 1052 will stop the state from wasting precious resources on beach maintenance issues and focus their attention on other areas that can best use their talent or reduce their budget accordingly.

Thank you for your kind attention towards this important Bill, and I trust that you will favorably consider passing SB 1052.

Testimony Before the Michigan Senate

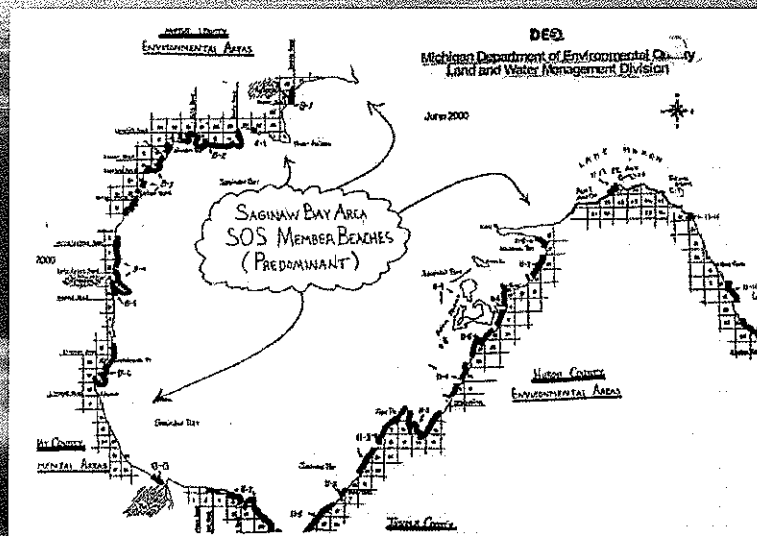
Natural Resources, Environment and Great Lakes Committee

April 26, 2012

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Joseph E. McBride

1

Environmental SOS in Saginaw Bay Area



2

Beach Maintenance History

Prior to 2000

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Trees, branches and dead vegetation

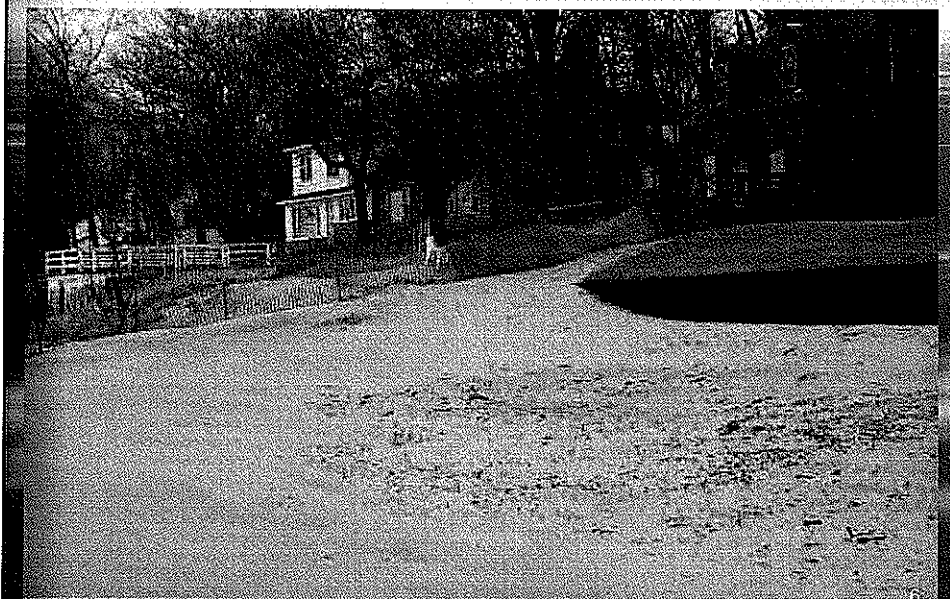


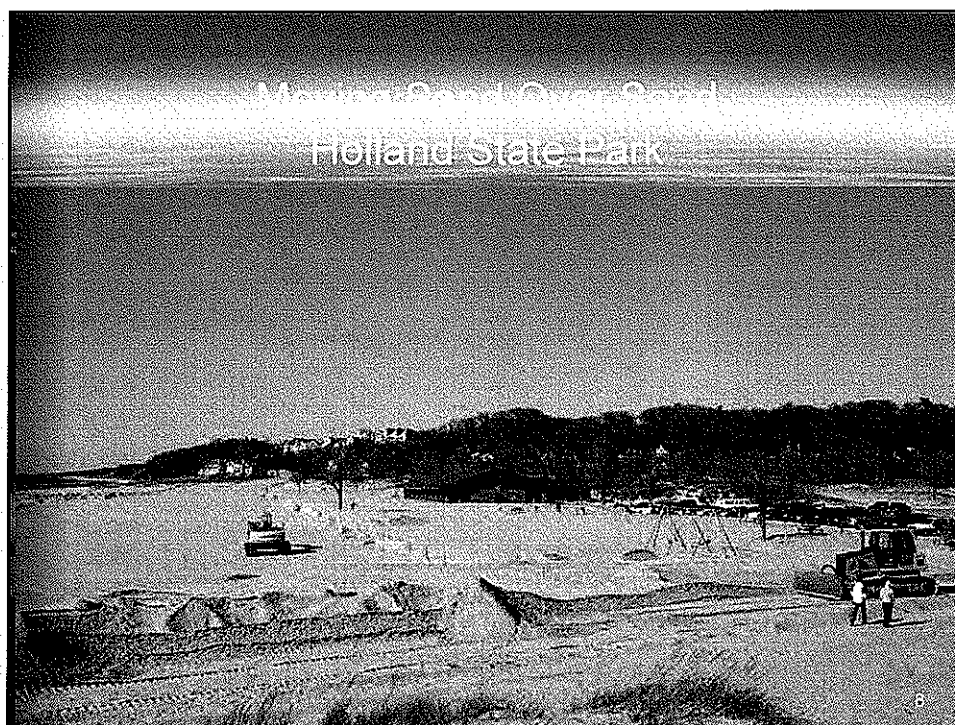
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Plastics, beer cans, zebra mussels and
vegetation clog up Chain Spring



Sand Accumulation





Removing Plastic Glass Fish Hooks Muck

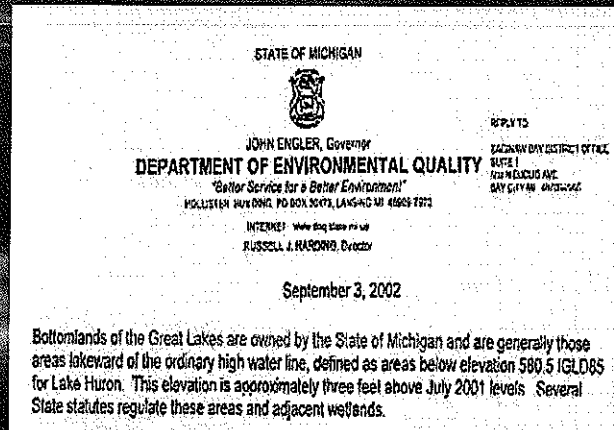


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History After 2000

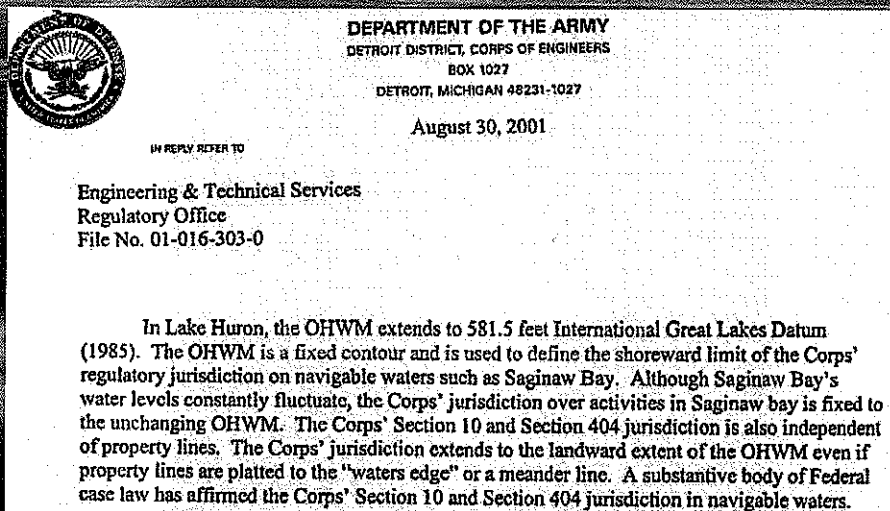
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Areas Below Elevation 580.5 Owned By The State



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Army Corps of Engineers Has Jurisdiction to 581.5 feet



12

FEDERAL DISTRICT COURT FOUND

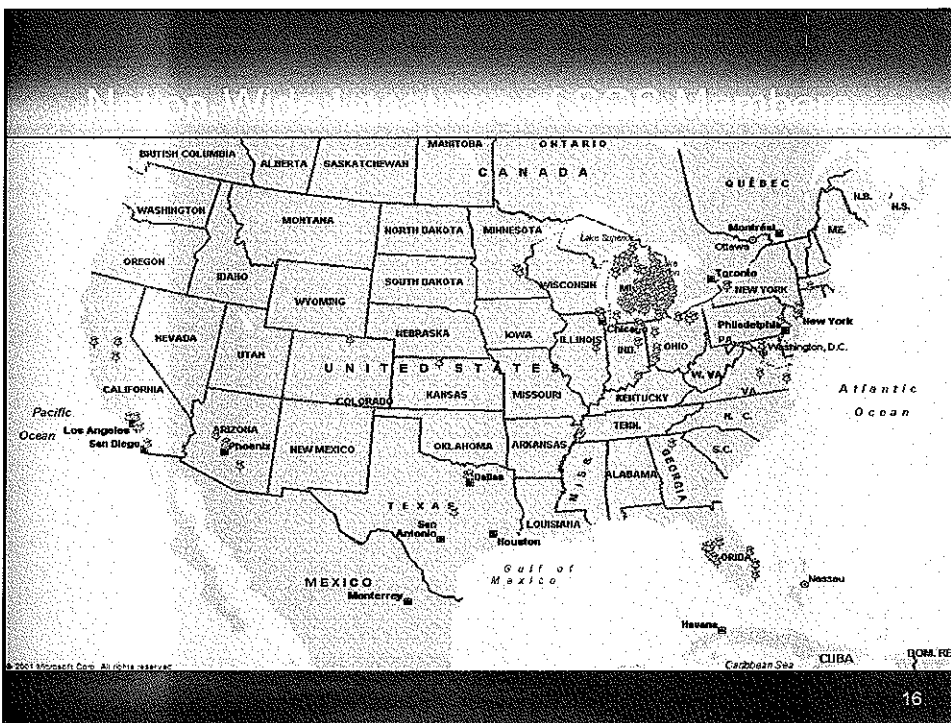
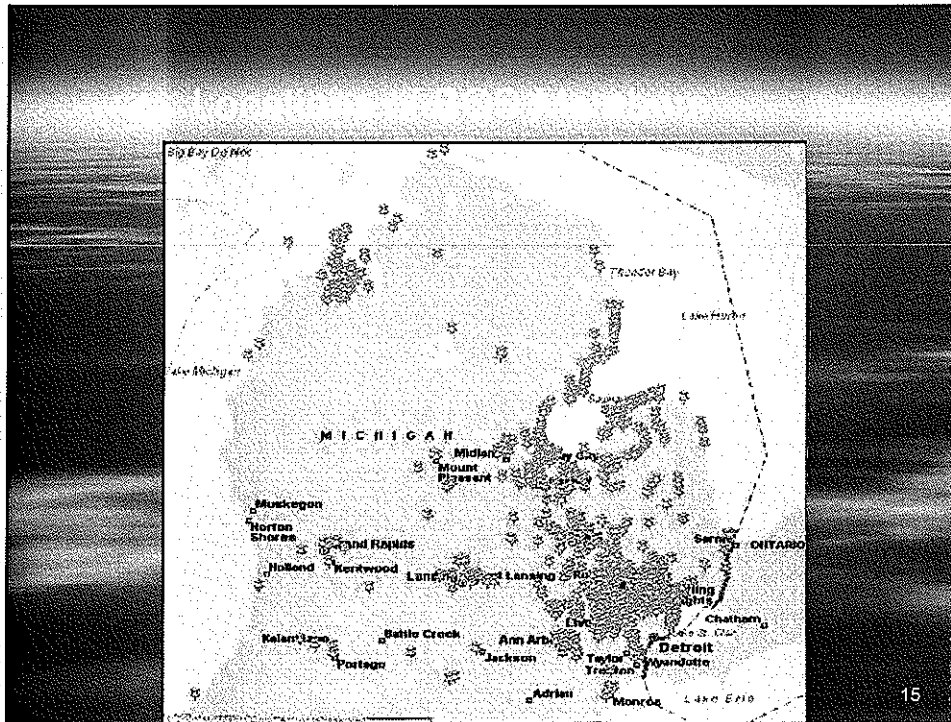
- The concept of an administrative OHWM finds no support in federal law.
- That reliance by the government on an administrative OHWM was unreasonable.

13

2005 Supreme Court Decision MDEQ & Army Corps Actions



14



Maintain Vegetated Wetland Area Along Lakeshore



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SAGINAW BAY DISTRICT OFFICE

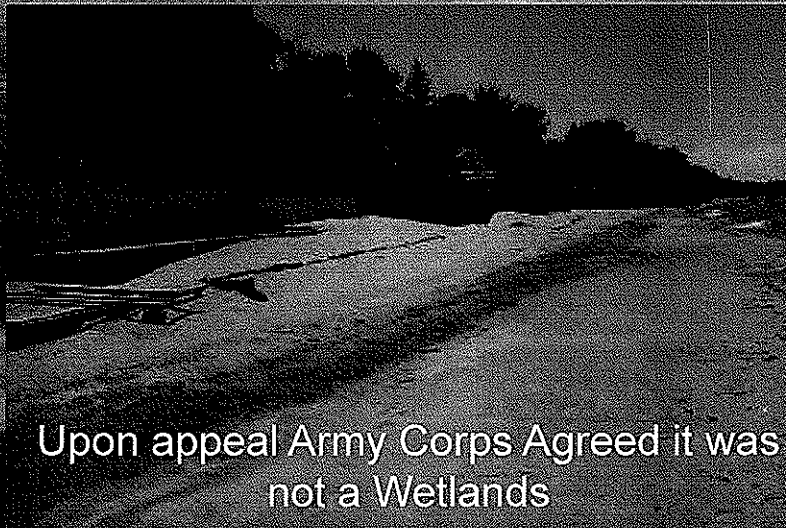


STEVEN E. CHESTER
DIRECTOR

March 4, 2003

The Department of Environmental Quality (DEQ) has reviewed your application for a permit to place fill below the ordinary high-water mark of Lake Huron. The DEQ has modified your permit to clarify the area which may be filled with the sand that has accumulated around your seawall. In order to maintain an existing vegetated wetland area along the lakeshore, the attached draft permit specifies that the sand shall be placed no further than 84 feet lakeward of the existing seawall.

The Army Corps Said This Was a Wetlands



Upon appeal Army Corps Agreed it was not a Wetlands

18

463 F.Supp.2d 680
(Cite as: 463 F.Supp.2d 680)

C

United States District Court,
E.D. Michigan,
Southern Division.
UNITED STATES of America, Plaintiff,
v.
MARION L. KINCAID TRUST and Marion L. Kin-
caid, Trustee, Defendants.

No. 02-10149.
Nov. 3, 2006.

19



20

The Army Corps Said The Kincaid's Were Doing

Stop or Face Fines of \$25,000/day



22

Bacterial Infections



23

Phragmites



24

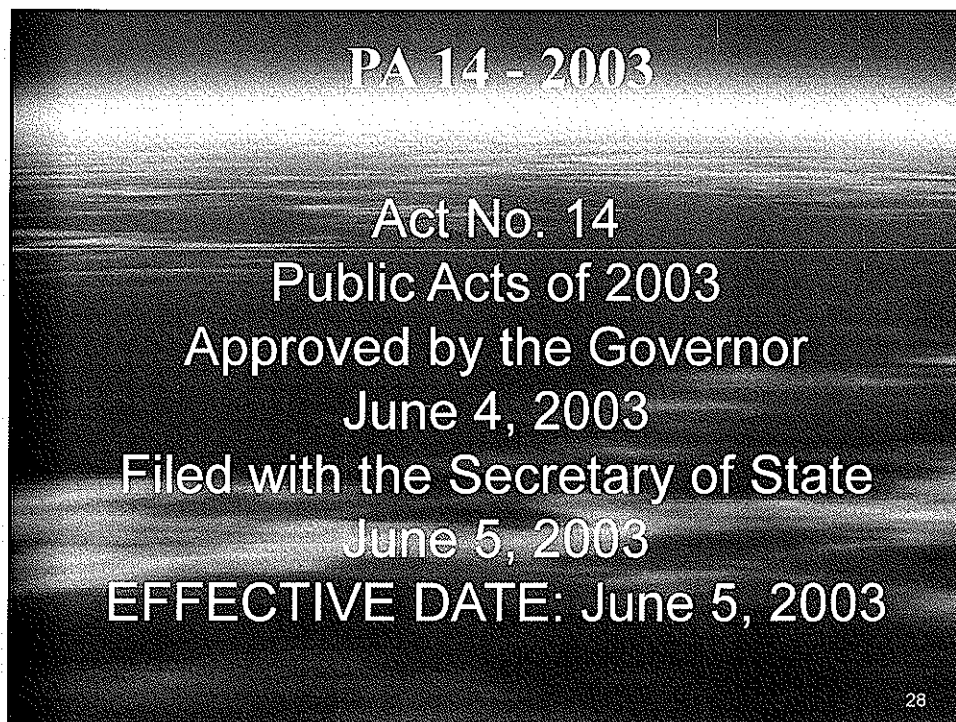
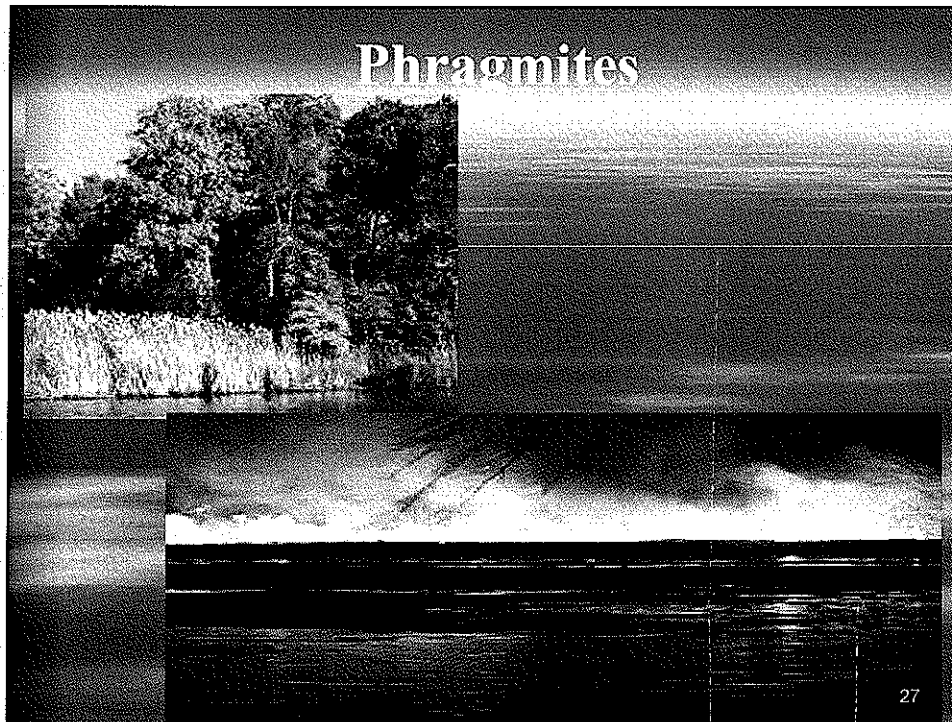
Cattails

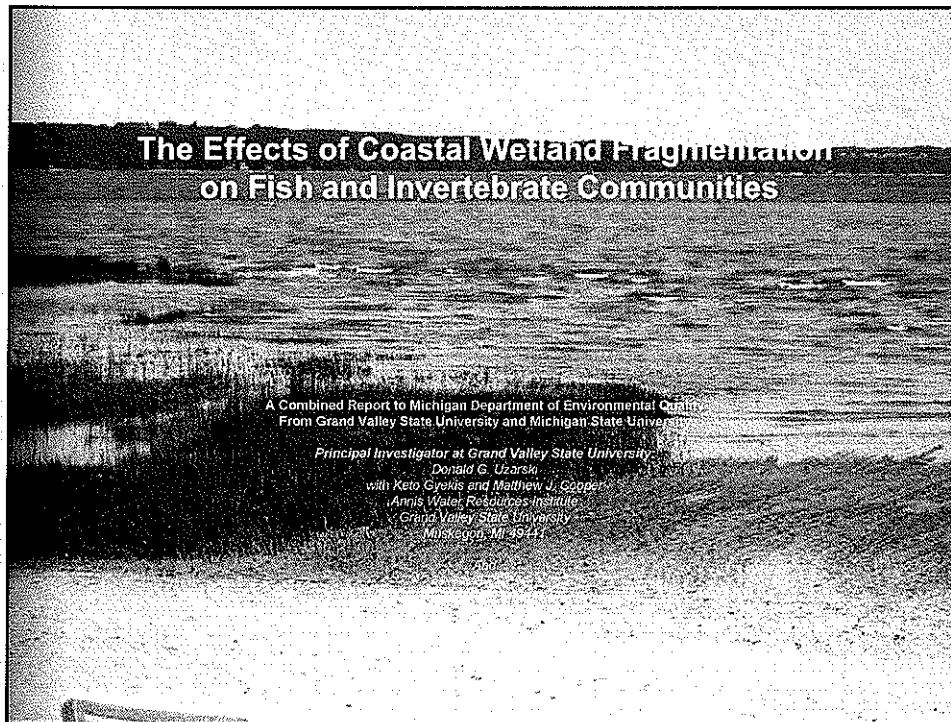


Phragmites



26





SOS's PEER REVIEW OF DEQ's

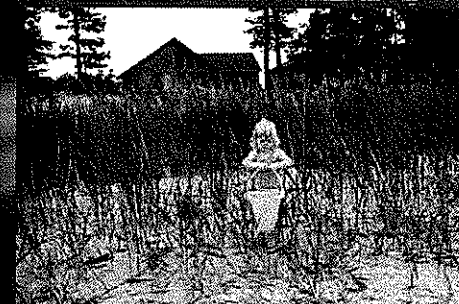
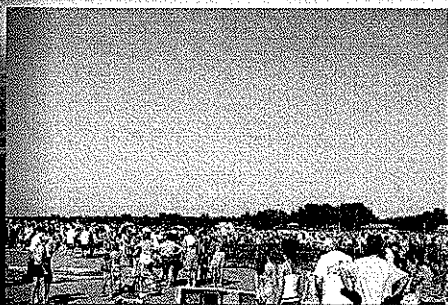
- **None of the research was specifically designed or undertaken for the purpose of evaluating the impacts on maintenance activities as the law required.**
- **Misleading effect of data manipulation and analysis.**
- **Data sampling was not random, thereby permitting the study to be biased.**

PEER REVIEW OF DEQ's STUDY

- **Lack of perspective – much less than 1% of the coastline in Saginaw Bay was impacted.**
- **Validity of referenced sites – initial design abandoned – contiguous referenced and treatment sites.**

31

Your Choice!



Thank you!

33